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OFFICE OF PETITIONS

In re	:	DECISION REGARDING
Cockerill, et al.	:	PATENT TERM ADJUSTMENT
Application No. 10/030,527	:	
Filed: January 9, 2002	:	
Attorney Docket No. PU3743USW	:	
	:	

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 1.705(b)", filed February 9, 2005. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from zero (0) days to ninety-six (96) days.

The application for patent term adjustment is **GRANTED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is **ninety-six (96) days**. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On November 12, 2004, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the instant application. The Notice stated that the patent term adjustment (PTA) to date is zero (0) days. On February 9, 2004, Applicants timely¹ submitted the instant application for patent term adjustment, asserting that the correct number of days of PTA at the time of the mailing of the Notice of Allowance is ninety-six (96) days.

Applicants state that the patent issuing from the application is not subject to a terminal disclaimer.

Applicants assert entitlement to a patent term adjustment of ninety-six (96) days on the basis that the PTO improperly assessed Applicants a delay of ninety-seven (97) days for responding to a Restriction Requirement mailed on July 2, 2003. Applicants assert that they timely filed a response on July 31, 2003, within the three month period pursuant to 37 C.F.R. §1.704(b).

The Office initially determined a patent term adjustment of zero (0) days based on an adjustment for PTO delay of one hundred fifteen (115) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. §1.703(a)(1), reduced by Applicants' delays of ninety-seven (97) and thirty-two (32) days pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. §1.704(b), and twenty-five (25) days pursuant to 35 U.S.C. 154(b)(2)(C)(i) and 37 C.F.R. § 1.704(c)(8). The adjustments of 115, 32, and 25 days have been reviewed and found to be correct. The adjustment of 97 days is at issue.

The adjustment of 97 days has been found to be incorrect. A review of the application file reveals that applicants filed their response to the July 2, 2003 Restriction Requirement on July 31, 2003. Accordingly, Applicants should not have been assessed a delay of 97 days.

Furthermore, as Applicants timely filed the Response to Restriction Requirement on July 31, 2003, the PTO had until December 1, 2003 to mail a response. The PTO did not mail a response until January 8, 2004. Accordingly, pursuant to 37 C.F.R. § 1.703(a)(2), PTO delay should have been assessed as thirty-eight (38) days.

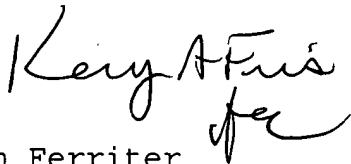
¹ Applicants filed the application for patent term adjustment prior to filing the issue fee.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is **ninety-six (96) days** (153 (115+38) days of PTO delay and 57 (32+25) days of applicant delay).

The \$200.00 fee set forth in 37 C.F.R. §1.18(e) has been charged to Deposit Account No. 07-1392, as authorized.

The application file is being forwarded to the Office of Patent Publication for processing into a patent.

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.

A handwritten signature in black ink, appearing to read "Karin Ferriter" with a stylized flourish at the end.

Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
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for Patent Examination Policy